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Attorneys for Defendant Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALLISON AUTOMOTIVE GROUP, INC., A Nevada Corporation, Plaintiff, v. VOLKSWAGEN GROUP OF AMERICA, INC. DBA AUDI OF AMERICA, INC., and ROE BUSINESS ENTITIES I through V Defendants.	**No. 3:11-cv-00288**

DECLARATION OF MIKE CAGLE

I, Mike Cagle, hereby declare pursuant to 28 U.S.C. § 1746(2) as follows:

1. I am the Director, Western Region, for Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"). I submit this declaration in support of Audi's Notice of Removal.

2. On or about March 31, 2011, plaintiff Allison Automotive Group, Inc, a Nevada corporation ("Allison" or "Plaintiff") filed a Complaint against Audi (named as "Volkswagen Group of America, Inc. dba Audi of America, Inc.") and Roe Business Entities I through V ("Roe Entities") in the above-captioned matter in the Nevada State Court as Case No. CV11-00975 (the "State Court Action").

3. True and correct copies of all process, pleadings, and orders served on Audi in the State Court Action are attached as Exhibits A (State Court Complaint) and B (Waiver of Service).

4. Audi of America, Inc., is an unincorporated operating unit of Volkswagen Group of America, Inc. ("VWGoA"). VWGoA is a corporation organized under the laws of the State of New Jersey. VWGoA's corporate headquarters are located in Virginia, and its administrative and executive functions are performed in that state. VWGoA's business operations are conducted in numerous states and are not concentrated in one particular state.

5. On or about January 19, 2011, Audi received a letter of intent concerning the purchase of Allison's dealership by Randolph Townsend and Suresh Naidu. This letter of intent contemplates the sale of all of the non-real property assets of Allison for the price of at least $3,000,000.

6. On or about February 17, 2011, Audi received a letter of intent concerning the purchase of Allison's dealership by Brett Coleman, manager of the Reno Dealership Group, LLC. This letter of intent contemplates the sale of all of the non-real property assets of Allison (excluding a list of fixtures) for the price of at least $1,250,000.

7. At some time after January 4, 2011, Audi received a letter from John Pico of Advising Automobile Dealers LLC, a firm Allison identified as its automotive consultants. The letter contained a list of five other offers for the purchase of the Allison dealership. Each of the offers included a valuation of the Allison dealership's "blue sky," a term used in the auto industry to refer to the "goodwill" of the dealership. Each of these valuations exceeded $75,000.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2011

Mike Cagle

CERTIFICATE OF SERVICE

I certify that I am an employee of Armstrong Teasdale, LLP, and that on this date, pursuant to Fed. R. Civ. P. 5(b), I am serving a true copy of the attached

DECLARATION OF MIKE CAGLE

on the parties set forth below by:

_x_________ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States mail, at Reno Nevada, postage prepaid, following ordinary business practices, addressed as follows:

James W. Puzey, Esq.
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
800 S. Meadows Parkway, Suite 800
Reno, Nevada 89521

DATED this 22nd day of April, 2011.

/s/Louis M. Bubala III
LOUIS M. BUBALA III

An employee of Armstrong Teasdale, LLP

EXHIBIT A

EXHIBIT A

FILED
Electronically
03-31-2011:11:38:40 AM
Howard W. Conyers
Clerk of the Court
Transaction # 2129298

CODE $1425
JAMES W. PUZEY, ESQ.
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Attorneys for Plaintiff

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON
SDW

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALLISON AUTOMOTIVE GROUP, INC., A Nevada Corporation, Plaintiff, v. VOLKSWAGEN GROUP OF AMERICA, INC. DBA AUDI OF AMERICA, INC., and ROE BUSINESS ENTITIES I through V Defendants.	Case No. Dept No.:

COMPLAINT

Plaintiff ALLISON AUTOMOTIVE GROUP, INC. ("Allison Automotive"), by and through its counsel, John P. Sande, IV, of the law firm of Jones Vargas hereby submits its Complaint against VOLKSWAGEN GROUP OF AMERICA, INC. dba AUDI OF AMERICA, INC. ("Audi"), and ROE BUSINESS ENTITIES I-V and alleges as follows:

I. Jurisdiction

1. The jurisdiction of this Court over the subject matter of this action is predicated on NRS 482.36423, due to the alleged violations of NRS 482.36371 by Audi.

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2. Allison Automotive is a Nevada corporation, licensed as a motor vehicle dealer and doing business in the State of Nevada with its principal place of business at 9190 S. Virginia Street, Reno, NV 89511.

3. Audi is a New Jersey corporation, operating as a motor vehicle manufacturer, doing business in the State of Nevada.

II. General Allegations

4. Allison Automotive became a licensed franchise auto dealer for the sale of motor vehicles manufactured by Audi on or about October 15, 2009.

5. Allison Automotive has invested substantial sums of money developing and operating its business as an Audi Dealer.

6. Since becoming a licensed franchise auto dealer for Audi, Allison Automotive's performance has exceeded the expectations of similarly situated dealers.

7. In late 2010, due in large part to the declining economic conditions in Northern Nevada, Allison Automotive determined that it must sell its franchise in order to prevent continued financial losses.

8. Unfortunately, Allison Automotive was unable to secure a buyer before falling out of trust with Ally Financial, Inc, ("Ally") a Delaware Corporation, (formerly GMAC), the flooring lender of Allison Automotive's new and used car inventory.

9. Although Ally took immediate legal action to secure its legal remedies in regard to the collateral maintained by Allison Automotive, Ally allowed Allison Automotive to continue marketing the dealership for sale to potential buyers.

10. On or about November 9, 2010, Ally notified Audi that Ally had suspended its wholesale line of credit with Allison Automotive and exercised Ally's Assignment of Factory Credits pursuant to Ally's General Security Agreement.

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11. On November 18, 2010, Audi informed Allison Automotive that it intended to terminate the franchise agreement with Allison Automotive in 60 days from receipt of the notice to terminate due to the fact that Allison Automotive had fallen out of trust with Ally.

12. Allison Automotive received Audi's notice to terminate on November 19, 2011.

13. Immediately after receiving the Notice to Terminate from Audi, Allison Automotive continued to aggressively market the dealership for sale to potential buyers.

14. Several potential buyers considered purchasing the dealership, but as negotiations continued, two groups of potential buyers became more interested and Allison Automotive focused its efforts to market the dealership for sale to those two groups.

15. On January 18, 2011, Wayne Allison and his representative, John Shadek, on behalf of Allison Automotive, met with representatives of one of these groups, Randolph Townsend and Suresh Naidu, to further discuss the potential purchase and negotiate a letter of intent for the purchase.

16. During this meeting, Wayne Allison and representatives of this group of potential buyers had a telephone conversation with Eric Weidle, a representative acting on behalf of Audi.

17. Eric Weidle, the Audi representative, indicated that Audi would accept a letter of intent for the purchase of Allison Automotive until midnight on January 18, 2011.

18. Allison Automotive entered into a letter of intent with representatives of this group of potential buyers, Randolph Townsend and Suresh Naidu, on January 18, 2011 and timely delivered the letter of intent to Audi.

19. On January 19, 2011 at approximately 9:00 am, without having requested or received a curriculum vitae from either Randolph Townsend or Suresh Naidu summarily rejected these individuals as possible dealer or group who could acquire the Audi franchise from Allison

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Automotive. Despite agreeing to accept the letter of intent, Audi never reviewed the qualifications of this group.

20. In a subsequent phone call with John Shadek, acting on behalf of Allison Automotive, Audi representatives indicated that the primary objection to the proposed sale was that the buyers, in the opinion of Audi, were paying too much for the dealership.

21. Allison Automotive immediately protested the rejection to Audi based on Audi's failure to review the qualifications of Randolph Townsend and Suresh Naidu in good faith, but rather than seeking immediate legal action, Allison Automotive sought to procure a buyer that would meet the approval of Audi.

22. On February 28, 2011, Allison Automotive delivered to Audi a letter of intent for the sale of the dealership to another potential purchaser, Brett Coleman. Once again, Audi failed to review this letter of intent in good faith and instead summarily rejected it without reviewing the qualifications of Mr. Coleman or other representatives of his group.

23. On March 3, 2011, Audi responded to Allison Automotive's letter of intent with the group led by Brett Coleman by rejecting the proposed sale due to the fact that Audi had terminated the franchise agreement.

24. Pursuant to NRS 482.155, the Department of Motor Vehicles is charged with the enforcement of Nevada Revised Statutes Chapter 482.

25. Thus, in order to exhaust its administrative remedies, Allison Automotive must be permitted to petition the DMV so that the DMV may consider whether Audi, through its actions in this matter, has violated NRS 482.36371.

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FIRST CLAIM FOR RELIEF

(Breach of NRS 482.36371(1)(c))

26. Allison Automotive hereby incorporates by reference as though fully set forth herein paragraphs 1 through 25 above.

27. Pursuant to NRS 482.36371(1)(c) Audi may not prevent the sale or transfer of an interest in a dealer licensed in the state of Nevada.

28. In accordance with applicable law, Allison Automotive sought the consent of Audi for the transfer and sale of the dealership to the different groups of potential buyers.

29. Audi unreasonably withheld its consent to the transfer and sale of the dealership.

30. As a direct result of Audi's actions Allison Automotive has directly suffered real and immediate irreparable harm.

SECOND CLAIM FOR RELIEF

(Breach of NRS 482.36371(1)(d)) (Two counts)

31. Allison Automotive hereby incorporates by reference as though fully set forth herein paragraphs 1 through 30 above.

32. Pursuant to NRS 482.36371(1)(d), Audi may not prevent a dealer from receiving fair and reasonable compensation for the value of the franchised dealership.

33. By refusing to properly consider the application or qualifications of the two groups of potential purchasers led by Randolph Townsend and Suresh Naidu and Brett Coleman, respectively. Audi has prevented Allison Automotive from receiving fair and reasonable compensation for the value of its franchised dealership.

34. As a direct result of Audi's actions Allison Automotive has directly suffered real and irreparable harm.

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SDW

THIRD CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing)

35. Allison Automotive hereby incorporates by reference as though fully set forth herein paragraphs 1 through 34 above.

36. Each contract governed by Nevada law contains an implied covenant of good faith and fair dealing that requires each party to the contract to exercise good faith in performing its obligations under the contract.

37. Audi's actions in rejecting the proposed sale to the groups led by Randolph Townsend and Suresh Naidu and/or Brett Coleman failed to meet the standards of good faith.

38. As a direct result of Audi's breach of the covenant of good faith and fair dealing, Allison Automotive has directly suffered real and irreparable harm.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. To enter an injunction during the pendency of this action and permanently thereafter, enjoining, restraining, and prohibiting Audi from taking any further action to terminate the franchise agreement between Audi and Allison Automotive.

2. To enter an order for three times the pecuniary loss sustained by Allison Automotive arising as a result of Audi's conduct as allowed by NRS 482.36423.

3. To enter an order for attorneys' fees and costs incurred in this litigation as permitted by NRS 482.36423.

4. To order such other, further, and additional relief as this Court deems just and proper.

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SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

AFFIRMATION

The undersigned does hereby affirm pursuant to NRS 239B.030 that the preceding document does not contain the social security number of any person.

/S/ JAMES W. PUZEY, ESQ.
JAMES W. PUZEY, ESQ.
Nevada Bar No. 05745
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
800 S. Meadows Parkway, Suite 800
Reno, Nevada 89521

EXHIBIT B

EXHIBIT B

COPY

FILED

2011 APR 15 PM 4:06

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BY A. Melendez
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Attorneys for Defendant Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALLISON AUTOMOTIVE GROUP, INC., A Nevada Corporation, Plaintiff, v. VOLKSWAGEN GROUP OF AMERICA, INC. DBA AUDI OF AMERICA, INC., and ROE BUSINESS ENTITIES I through V Defendants.	Case No. CV11-00975 Dept No.: 6

WAIVER OF SERVICE

Defendant VOLKSWAGEN GROUP OF AMERICA, INC., DBA AUDI OF AMERICA, INC., by and through its counsel, JANET L. CHUBB, ESQ., and LOUIS M. BUBALA III, ESQ., of ARMSTRONG TEASDALE, LLP, hereby appears and waives service of the Summons and

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Complaint filed in the above-entitled action.

AFFIRMATION

The undersigned do hereby affirm pursuant to NRS 239B.030 that the preceding document does not contain the social security number of any person.

Dated the 15th Day of April, 2011

ARMSTRONG TEASDALE, LLP

/s/Louis M. Bubala III
LOUIS M. BUBALA III, ESQ.

Attorneys for Defendant Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.

CERTIFICATE OF SERVICE

I hereby attest that the following document

WAIVER OF SERVICE

was mailed by first-class mail on this date on plaintiff's attorney pursuant to NRCP 5 at the following address:

James W. Puzey, Esq.
Santoro, Driggs, Walch, Kerney
Holly & Thompson
800 S. Meadows Pkwy., Ste. 800
Reno, Nevada 89521

Dated this 15th Day of April, 2011

By: /s/Louis M. Bubala III
LOUIS M. BUBALA III